

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY
BRANCH 33

SHIRLEY ANN PENNOCK, ESTATE
OF WILMAR ROBERT PENNOCK,

Plaintiff,

vs.

Case No. 750-082

H.K. PORTER, INC., SOUTHERN
TEXTILE CORP., CELOTEX CORP.,
EAGLE PICHER INDUSTRIES, INC.,
UNITED STATES GYPSUM COMPANY,
W.R. GRACE & COMPANY,
OWENS-ILLINOIS, INC.,
BUILDING SERVICE INDUSTRIAL
SALES COMPANY, INC.,

Defendants.

TESTIMONY OF SAM SCHILLACI

June 23, 1989

Before the HONORABLE LAURENCE C. GRAM, JR.
Circuit Court Judge, Branch 33, presiding.

A P P E A R A N C E S:

BORGELT, POWELL, PETERSON & FRAUEN, S.C., by
STEVEN CELBA, 15th Floor, 735 North Water Street,
Milwaukee, Wisconsin 53202-4188, appeared on behalf
of Owens-Corning Fiberglas.

DAVIS & YOUNG, by MARTIN MURPHY, 1700 Midland
Building, Cleveland, Ohio 44115, appeared on behalf of
Eagle Picher Industrices, Inc.

FOLEY & LARDNER, by TREVOR WILL, Suite 3800,
777 East Wisconsin Avenue, Milwaukee, Wisconsin
53202-5367, appeared on behalf of Owens Illinois, Inc.

Appearances Continued:

SCHIFF, HARDIN & WAITE, by ROBERT RILEY and BARBARA HERMANSEN, 7200 Sears Tower, Chicago, Illinois 60606, appeared on behalf of Owens Illinois Inc.

NESS, MOTLEY, LOADHOLT, RICHARDSON & POOLE, by THOMAS HART III, P.O. Box 365, Barnwell, South Carolina 29812, appeared on behalf of the Plaintiff.

ATTORNEY JOHN CABANISS, 207 East Michigan Avenue, Milwaukee, Wisconsin 53202, appeared on behalf of the Plaintiff.

WITNESS INDEX

<u>SAMUEL SCHILLACI</u>		<u>Page</u>
Direct Examination	by Mr. Riley	3-30
Cross-Examination	by Mr. Hart	31-61
Redirect Examination	by Mr. Riley	61-63
Recross-Examination	by Mr. Hart	63-65

(No exhibits marked for identification)

TRANSCRIPT OF PROCEEDINGS

(Court back in session at 12:30 p.m.)

THE COURT: Be seated, please.

Mr. Riley.

MR. RILEY: Thank you. Owens Illinois would like to call Sam Schillaci to the stand, please.

Mr. Schillaci.

THE CLERK: Right up here, sir. Raise your right hand. Do you solemnly swear the testimony you give in this matter will be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: So help me God.

THE COURT: Please be seated, sir. Thank you. Would you state your name and spell your last name?

THE WITNESS: Samuel Francis Schillaci, S-c-h-i- double l-a-c-i.

SAMUEL SCHILLACI, having been first duly sworn on oath to tell the truth, the whole truth and nothing but the truth testified as follows:

DIRECT EXAMINATION

BY MR. RILEY:

Q Mr. Schillaci, would you tell the Ladies and Gentlemen where you live?

A 5780 Strathmore Lane, S-t-r-a-t-h-m-o-r-e, Dublin, Ohio.

1 Q Would you tell the Ladies and Gentlemen your date of
2 birth, please?

3 A September 26th, 1913.

4 Q Okay. My understanding, sir, is that you wear hearing
5 aids in both ears; is that correct?

6 A Yes. That's correct.

7 Q I'm going to try to speak up and more importantly,
8 speak clearly. You got all the batteries all charged
9 up and ready to go?

10 A Yes. I have no problem with volume, it's enunciation.

11 Q Okay. Are you currently working, sir? Are you
12 currently working?

13 A No, retired -- semi-retired. I do a little consulting
14 work.

15 Q What kind of consulting do you do, sir?

16 A Well, I consult with Owens Illinois and some
17 responsibilities that I had during the time that I was
18 an employee there.

19 Q All right. Now, did you -- were you ever an employee
20 for Owens Illinois in its Kaylo Division, sir?

21 A Yes.

22 Q During what period of time?

23 A About mid-1952 to mid 1954.

24 Q All right. Now, we'll come back to that, but first
25 could you go through your working career, sir, and tell

1 us the kind of jobs you have held and what you did?

2 A Well, let's see. In 1932 I just started college and I
3 needed a job if I was going to continue with my
4 education, so I found a job with Owens Illinois in
5 their Columbus, Ohio plant. And I did janitor work so
6 that I could work nights and go to school days and to
7 the extent it was possible, for the next several years
8 we worked that way. Most of the work that I did was
9 general labor until the latter 30's when I became a
10 foreman and then later on I became purchasing agent for
11 the Columbus, Ohio plant and service manager. And when
12 I left the plant in 1947 I was quality control
13 supervisor. In '47 I was transferred to the Toledo,
14 Ohio offices and I was made production manager for that
15 part of the business that made glass containers that
16 served the food industries, milk bottles, ketchup
17 bottles, pickle jars, so forth. It was on that
18 assignment and for five years after, 1952, I was asked
19 to take on a special assignment in the Kaylo Division.
20 I was there for two year. After my assignment in Kaylo
21 I was asked to leave the company and go with a --
22 another company that Owens Illinois had a 50 percent
23 interest in. It was called Plax Corporation, P-l-a-x.
24 It was in the process of developing plastic bottles,
25 and I went there as production manager and was with

1 them for ten years. When I left the company in 1964 I
2 was vice-president for marketing. In '64 I returned to
3 Owens Illinois proper and I was assigned to the Forest
4 Products Division, and they sent me to
5 New York City area where there were two carton box
6 plants. And I ran those two box plants until 1966 and
7 then I was brought back to Toledo and given
8 responsibility for running three small businesses which
9 were a part of the Forest Products Division. One of
10 them was fiber cans, that's the paper body and metal
11 ends that you find for orange juice concentrate, quarts
12 of motor oil and so forth. The other business was
13 paper and plastic shipping sacs used for aggregate or
14 pet foods or for general materials. And the third
15 business was pine oil fractionating. Pine oil being a
16 byproduct of the paper-making process. We would
17 distill and get terpentine, fatty acids, rosin, things
18 of that nature.

19 I ran those three businesses until 1970 and I
20 was made general manager of the T.V. Products Division.
21 And the principal product of that division were the
22 glass parts for the television picture tube.

23 In 1971 I was made a vice president of the
24 company, and I retired in 19 -- I ran that division
25 until 1978 and retired in 1979.

1 Q Now, sir, when you became a vice president did you ever
2 have any responsibilities concerning that Columbus
3 plant where you used to sweep floors?

4 A Yes. I had a lot of friends there.

5 Q Did you ever actually get any college degree, sir? You
6 mentioned you were going to school while you were
7 working?

8 A No. I never managed the degree. I pieced together
9 maybe equivalent of three years, or something like
10 that.

11 Q How come you didn't go all the way and get the degree,
12 sir?

13 A Well, 1936 I fell in love and got married and I had a
14 wife and house to think about and 1939 I became a
15 father, more responsibilities, and my education kept
16 getting farther and farther back on the stove. Then we
17 had a war and that took care of it.

18 Q All right. Sir, would you please go back in time then
19 to this 1952 to 1954 period --

20 A Yes.

21 Q -- and the Kaylo Division? Would you tell us, please,
22 what was your assignment?

23 A Well, to begin with the materials that were made in the
24 so-called Kaylo Division had become commercial, that is
25 it went to continuous operation in 1948 and the company

1 in that division had been experiencing considerable
2 losses ever since they went commercial and -- this was
3 1952. And after four years of this the management of
4 Owens Illinois came to the conclusion that it was time
5 to make a change. So they asked one of their vice
6 presidents, a Mr. Gordon King, J. Gordon King, if he
7 would take over the division, learn it as quickly as he
8 could, as much as he needed to know about the business
9 and determine whether or not it could ever be made
10 viable, profitable, and following this to come back to
11 management with recommendations with what should be
12 done with it. Mr. King asked me to go with him on this
13 assignment. So in that sense it was my assignment,
14 too.

15 Q Well, how did you go about your assignment, sir?

16 A Well, the first thing we did was to visit the two
17 plants in which this material was being made. One was
18 in Sayreville, New Jersey, which is near New York, and
19 the other one was Berlin, New Jersey, which is near
20 Philadelphia. And we met with people and Mr. King
21 decided that since the big ends of the business, where
22 the most capital had been spent, where the greatest
23 hope for making a viable business out of this was, that
24 he would take it over. So he took over the Sayreville
25 plant which made roof tiles and core material for fire

1 doors. He asked me to go to the Berlin plant and take
2 that over.

3 Now, at the Berlin plant it was originally a
4 small brick plant which had been purchased by
5 Owens Illinois I think in 1943 and made into a paylot
6 plant. That's where all of the Kaylo products were
7 developed. And it was at that time that I became
8 involved. It was producing insulation blocks and pipe
9 coverings. It was a relative small business so that
10 was given to me to do. And Mr. King and I would meet
11 every week, two or three times depending on how much
12 information we had to exchange and we would exchange
13 that information and make determinations of what our
14 next steps were. That's pretty much how we get
15 involved in the thing.

16 Q Well, when you went to the Berlin plant, sir, what did
17 you do?

18 A Well, of course I had to learn the business from
19 scratch and I had to do it fast. So having been grown
20 up in the merchandising plant from the very beginning
21 my mode of operation was to become immersed in the
22 business by first of all moving into an office on the
23 operating floor, I remember it didn't even have a door,
24 and working with the people that actually made the
25 product. At one time or the other I spent at least one

1 shift in every step of the operation so that I would
2 know first hand what we were doing, what we were
3 making, we we expected of it, so forth. The next thing
4 that I did was to get involved in engineering to find
5 out how did we get into this business, Owens Illinois,
6 who was a glass company, primarily, glass container
7 company and a substantial company in the business. How
8 did they ever get into this. And I found that maybe in
9 the early 30's somebody from -- from management had
10 discussed with someone in research what else could we
11 make with sand lime soda ash besides glass. And so a
12 little research was done and someone found an old
13 German patent that said if you took equal parts of sand
14 and lime and mixed them with water and put them in a
15 mold of some kind and put that in a chamber where you
16 could introduce a high pressure state, an autoclave,
17 that you could produce a material that was an excellent
18 insulating material in the higher temps. And by higher
19 temps I mean over 450 degrees, because it was hydrous.
20 It was not water soluble. It would withstand the
21 element. And it was an interesting material. So
22 somebody experimented with the mold, this pattern, sure
23 enough, it came. It was interesting. So they acquired
24 the patent. The engineering people were able to give
25 me some of the milestones of the developments along the

2

1 time when all of this started up, until the time that I
2 was there. And then my third step was to go into the
3 field. I wanted to know who did we sell this too, how
4 did they use it, how was it applied, who were our
5 customers, who were the people that actually did the
6 installation work, so forth. And during the course of
7 two years I visited more than 50 sites where our
8 material was being applied and talked to the -- not
9 only to our customers, which were usually the
10 contractors on the job, but to -- to the people who
11 actually applied it to see what they thought of it.
12 This was my way of getting as much knowledge as fast as
13 I could to round out what I needed to know in order for
14 us to come to the decisions that we had to based on the
15 assignment we had.

16 Q Would you tell us, sir, what this Kaylo product was?

17 A Kaylo consisted of -- as we made the pipe covering and
18 the block was made of equal parts of sand and lime up
19 to 85 percent of a mass. The other 15 percent was
20 chrysotile asbestos, and of course there was water in
21 the beginning so as to make it into a slurry so when
22 the piece was finished it was something that looked
23 like concrete. After all it had the same ingredients
24 so -- as concrete, so it had concrete-like
25 characteristics. It was hard. It was brittle. If you

1 pounded on it you broke it. You scrapped it. It was
2 of no use. It was not water soluble, which meant that
3 if it got wet and dried, you still have a good piece of
4 material. Did not lose any of its properties. Did not
5 disintegrate in any way. It was sort of an off-white,
6 a sandy white, if you will. You could not -- because
7 it was hard you could not cut it with a knife. You had
8 to use a saw or something with a serrated edge. Just
9 about describes it.

10 Q You described it as a pipe covering or a block.
11 There's been reference in this trial to other things
12 like asbestos blankets. Was Kaylo an asbestos blanket?

13 A No. We were not in the asbestos business. No. All we
14 made was just what I've described.

15 Q So you didn't make felt or cement or gaskets or
16 clothing, things like that?

17 A Nothing other than those two products.

18 Q Did Owens Illinois mine or mill asbestos?

19 A No. We were not in the absestos business. We -- what
20 we used we purchased from somebody who was.

21 Q Who were your customers, sir?

22 A Well, because our material was a premium-type material
23 made at premium cost and sold at premium prices it was
24 a material that was sold to people who had either the
25 need for high temp insulation or had a need for an

1 insulation that would be impervious to the elements, if
2 you will. So our principal customers were oil cracking
3 plants, chemical plants, petro chemical plants, power
4 generation plants, things of that nature.

5 Q How about shipyards?

6 A Sir?

7 Q Shipyards?

8 A We sold very little to the marine -- any shipyards.
9 Very little.

10 Q Why was that, sir?

11 A Well, I just don't think there was the need for that
12 type of material, and for that reason it was used very
13 sparingly. It was high priced as compared to other
14 materials, and if they didn't need the high priced
15 material, they didn't use it.

16 Q You said you and Mr. King had an assignment to make a
17 decision of the future of this business. Did you reach
18 any decision, sir?

19 A Yes. It didn't take us very long to come to it. Roof
20 tile and core materails -- we had excellent materials
21 but the marketplace would not support higher prices and
22 without higher prices we would never make it a viable
23 business, so reluctantly we made a recommendation,
24 which was let's get out of that business. And in due
25 course management accepted it and said go to it. So in

1 the early spring of 1953 we shut down the Sayreville
2 plant where we made those products and we disposed of
3 the equipment.

4 Now, the question was what did you do with
5 this little operation that makes only two products in
6 Berlin. We were strange to the insulation industry.
7 We were a glass company. And is there any reason for
8 staying in that? And we came to the conclusion, no,
9 there was no reason in staying in that business either.
10 So we approached our customers and told them what we
11 were thinking, and there was such a reaction that we
12 had to come back and rethink about it. Evidently our
13 customers thought very highly of this product, not
14 enough to pay higher prices, however, so we felt that
15 if our customers, the people that used it thought so
16 much of it that there had to be some value there. We
17 modified our thinking a little bit and said we should
18 go out of this business but we should do it by
19 continuing with the plant just as it was, not expand it
20 in any way, and that we should do whatever we could to
21 reduce the cost so as to stop this bleeding, these
22 losses that were being incurred every month. And in
23 the meantime have somebody start to look for a possible
24 buyer, someone who was in the insulation business, per
25 say, and have a full line of products. Someone who

1 would find these products useful to his line as a
2 natural adjunct in his line and eventually probably
3 would be able to sell this business to them. And that
4 way we would continue to manufacture without staying in
5 the business any longer than was necessary to find a
6 buyer. That was our two recommendations to management
7 and they bought it.

8 Q Well, when management bought the recommendations what
9 did you do about it?

10 A Well, of course we -- we had to cut our costs because
11 we couldn't stand the -- the -- if I can use the word
12 again, the bleeding, and we approached it in several
13 ways. For instance, we felt that we didn't need to do
14 our own selling. We were so small that if we could
15 find someone who would be -- who was in the insulation
16 business, per say, that they could buy our product at a
17 wholesale price, that they would maybe sell our product
18 that way, and that way we would not have to maintain a
19 sales force and the marketing efforts and all that.
20 And we did just that.

21 We then went to engineering and determined
22 from them what we could do to improve productivity, and
23 among other things we cut down the number of items that
24 we made. We reduced our manufacturing list so as to
25 make only the popular once. And the third thing was to

1 get into the field and see if we could get those people
2 that knew our product well to buy directly from us so
3 as to be able to move what we could make. Part of it
4 would be sold to somebody who was in the -- the
5 insulation business by contract and we would sell the
6 rest of it. And the fourth thing that we did was to
7 look at everything that we bought, to determine what we
8 could do to reduce the cost of materials to us. We
9 looked at everything. One of the things we looked at
10 was our raw materials.

11 Among our raw materials the most expensive one
12 was chrysotile asbestos. Not only was it high priced
13 but it was difficult to get, for whatever reason, which
14 I have never fully been able to understand. We could
15 never get a continuous supply, and on occasion we would
16 just run out and have to stop. So Mr. King asked the
17 engineering department, what could we do about this
18 fiber. And first I want to explain that the need for
19 this fiber was not for insulation purposes. The need
20 for this -- for this fiber was the grains of sand.
21 When they were put together in -- the chemical
22 reactions were not strong enough to withstand handling
23 in the plant, shipping sometimes long distances, and
24 rehandling on the job, therefore, you had to have
25 something in it to act as binder to give it strength

1 and -- and fortitude in the product so it would
2 withstand all that handling and shipping. So the --
3 engineering said that they had been trying for some
4 years to find a substitute because of the unreliability
5 of supplies, plus the cost, and so forth, and never
6 been successful. And Mr. King said, let's try it
7 again. I was there and saw the test results of that
8 particular trial. I don't remember all the fibers.
9 There were a lot of them tried. I remember three of
10 them specifically, fiberglass, other one is baggasse,
11 sugar cane fiber, and the third one was wood fiber.
12 The lime in our product attacked the glass so it has
13 its fiber quality and it has begun to a certain extent,
14 survived the autoclave, chemical reaction, but
15 something happened to it because it was organic
16 material. And those pieces that we salvaged split
17 after we put them in a warehouse to watch what the
18 reaction would be. So that we found that we could use
19 no other product other than asbestos chrysotile. Those
20 were the things that we did to attack it overall.

21 Q During the period 1952 to 1954 you were telling us an
22 attempt was made to substitute some other material for
23 the chrysotile in the pipe covering and it was
24 unsuccessful?

25 A Yes. I think it was a second attempt in doing this.

1 They may have made it before. Yes, exactly what I am
2 at.

3 Q Now, you indicated that in 1953 the Sayreville plant
4 where they made this other kind of Kaylo --

5 A Yes.

6 Q -- the roof tile and door was closed, no more door core
7 material was ever made by Owens Illinois?

8 A Yes.

9 Q Did that mean --

10 A No. We're an honorable company and we -- when we make
11 a commitment, we make a commitment. That's how
12 Owens Illinois is. We had a number of customers that
13 made fire doors. These were used in hospitals, hotels,
14 things like that, and they had converted their
15 operation to using this material and manufactured their
16 doors, and we couldn't just arbitrarily say, sorry, we
17 don't make it any more and let it go with that because
18 no one else was making it.

19 Now, this material was a different material in
20 density and in ingredient than what we made at the
21 Berlin plant, which was the pipe covering and block.
22 So what we did to keep our word to them was this, that
23 we're going to go out of the business but we will keep
24 you supplied until you find another material or someone
25 else who can make it for you. Whatever long period of

3

1 time that takes we'll supply you. And the way that I
2 set it up and it continued after I did it, I'm aware of
3 that, was that we would monitor the inventory and when
4 it got too low we would ask our customers for estimates
5 of how much they were going to need for the next six
6 months or year. I don't remember which -- what it was.
7 And they would give us those estimates. Then we would
8 gather all of the ingredients necessary to make this
9 material and when the time was right we would shut the
10 plant down, clean out all of the tanks and pipes and
11 what have you, and then we would make this other
12 material, which is the core material. And this core
13 material was made in density, 20 pounds per cubic foot,
14 and it contained -- in addition to sand and lime it
15 contained some diatomaceous earth, which is a little
16 form. So it contained a little cement. This is how
17 you got 20 pounds of density, whereas the other
18 product, the one made for insulation, that was made at
19 about 11, 11-and-a-half pounds density. It was only
20 sand and lime chrysotile asbestos. Any way, we would
21 make it. We would run out of all the ingredients. We
22 had to accumulate and stack it up in the warehouse,
23 excuse me. This is how we supplied those customers to
24 which we have made a commitment with the product that
25 we would have.

1 Now, I know before I left we either made one
2 run or we were going to make it right after I left, and
3 I am aware that they had made other runs after that.

4 Q You said when you learned the business you spent time
5 on each shift at each step of the process?

6 A Exactly.

7 Q Including the part where you saw and square off the
8 ends of this material?

9 A Exactly. Everything. I even loaded trucks.

10 Q Did you ever, you, yourself, saw Kaylo --

11 A Many times. Many times.

12 Q -- pipe covering? Your field visits, those trips you
13 made out in the field --

14 A Yes.

15 Q -- did you observe Kaylo pipe covering being applied
16 when you went on those field trips?

17 A That was the principal reason for making the trip.

18 Q Did you ever go to a shipyard to see Kaylo pipe
19 covering applied?

20 A Only twice.

21 Q This is during that '52 to '54 period, right, sir?

22 A Yes, um-hum.

23 Q So you had an opportunity to observe the -- whether
24 dust was created when Kaylo pipe covering was cut on
25 the shipyard?

1 A I was there when they were applying it, yes.

2 Q And what did you observe when you saw Kaylo pipe
3 covering cut?

4 A In relation to what?

5 Q With respect to dust.

6 A Oh, well, since our material was hard material and it
7 had to be sawed there would be a lot of granuals fall
8 to the floor. I'm sure there was some small degree of
9 dust created from that, but the thing that -- that
10 sticks in my mind is the fact that whatever dust there
11 was was absolutely minimal compared to what we had in
12 our factory where we produced the stuff and had control
13 of conditions.

14 Q Did you also familiarize yourself with your
15 competitors' pipe covering products, sir?

16 A To the extent that I could, yes. I wanted to know
17 what -- what the competiton was like.

18 Q Did you observe those types of covering materials when
19 they were cut?

20 A I may have. I don't specifically remember.

21 Q What was the composition of competitors' materials
22 compared to this hydrous calcium silica?

23 A There were many different types of materials. The one
24 I remember most is the one with magnesium, 85 --
25 85 percent magnesium.

1 You want me to describe it or what?

2 Q Yes. Yes, sir. In the same terms. In terms of
3 dustiness, what you personally observed.

4 A Well, I know that magnesium was chalk white material
5 that was water soluble, slippery when wet. I remember
6 that. It was patable. You can pound it, shape it a
7 little bit, but you could cut it with a knife. Pure
8 white, I know that. It broke down after a series of
9 getting wet and drying, getting wet and drying. It
10 would break down. I have seen some magnesium that was
11 hanging by the -- the cotton wrapping that it had, just
12 hanging on the pipes. Looked like it was scallop. I
13 can remember that.

14 Q Sir, were you familiar with Owens Illinois' policy
15 regarding health and safety in this period of 1952 to
16 '54?

17 A Of course, yes.

18 Q Okay. And what was your understand of that policy,
19 sir?

20 A Well, see, there was an overriding policy which said
21 that Owens Illinois would never make a product that was
22 hazardous for -- to the people that made it, people
23 that handled it and the people that used it. And from
24 that was derived other policies such as if you have a
25 new product it will be tested and it will be tested by

1 outside experts, people who are recognized experts in
2 the field. The -- the organization -- the
3 Owens Illinois organization at the corporate level had
4 a personnel department that was divided in several
5 parts, administrative, insurance and industrial
6 relations, and so forth. It also had a medical arm.
7 The medical arm, um, was supervised by a doctor.
8 Charles Shook was the doctor, and it was divided in
9 several parts. One part being industrial hygiene and
10 it was headed up by an industrial hygienist, and then
11 there was a safety director. And their job was to
12 visit the plant and make sure that the programs in each
13 of the plants were such that the company policy of
14 number one, making no hazardous materials, was
15 followed, and where there was need to take any special
16 attention to anything that had to deal with hygiene,
17 safety or otherwise, they would see to it that rules
18 were laid and applied, and then the personnel
19 department at the factory level would see to it that
20 they were carried out.

21 Q So I take it, sir, then that the industrial hygienist,
22 Mr. Hazard, and Dr. Shook, it was their job to focus on
23 their aspect of the policies as opposed to yours?

24 A Oh, yes. They had the expertise. They were the people
25 that laid the rules. It was our job to see that it be

1 followed.

2 Q All right. Now, do you have any understanding -- I'm
3 sorry. Let me start over.

4 Did you have any understanding in the 1952 to
5 1954 period whether the policies you have just
6 described were followed with respect to Kaylo pipe
7 covering?

8 A I know they were followed implicitly.

9 Q There has been some discussion in this case about the
10 actual reports, details done by a Saranac Lake. Were
11 you aware of those documents and details back in the
12 1952 to 1954?

13 A No. I was aware only that someone had tested it in
14 accordance with company policy. That's all.

15 Q And did you hear any report from Mr. Hazard in terms of
16 that?

17 A In the transitional meeting when we -- when Mr. King
18 and I first took over I recall Mr. King asking
19 Mr. Hazard, has this product been tested in accordance
20 with public people policy. The answer was yes, and
21 they found it to be safe to use under normal
22 conditions. There was no need for us to pursue it
23 beyond that point. They were the boys with the
24 expertise and with the responsibility and they knew the
25 company policy.

1 Q You are referring to Mr. Hazard now?

2 A Mr. Hazard, everyone in the -- that was involved, yes.

3 Q In 1952 to 1954 did you feel comfortable relying upon
4 Mr. Hazard's advise to you, sir?

5 A Oh, yes. I knew Mr. Hazard for many years. I knew he
6 was not only capable but a very conscious person. I
7 had no reason to be concerned about that.

8 Q You said you at the plant would do what you were told
9 to do. Were you told to do anything with respect to
10 health and safety programs in the '52 to '54 period at
11 the plant?

12 A Well, there were rules that had been -- and procedures
13 that had been -- had been installed in accordance with
14 company policy from the day one when the plant went
15 commercial. During that two-year period I recall the
16 only thing that was -- that came to my attention was
17 that Mr. Hazard felt that we ought to have just a wee
18 bit more dust collecting capacity, and just to be on
19 the safe side to make sure that we complied with the
20 laws of the state. And we saw to it that it was
21 provided immediately.

22 Q Did the New Jersey State officials come in and -- into
23 your plant, sir, in 1952 to 1954 to do dust
24 measurements and apply the --

25 A Yes.

1 Q -- whatever the prevailing standards were at the time?

2 A Yes, they did.

3 Q Did you ever see -- receive any report that the dust
4 concentrations were any higher than the minimum
5 standards?

6 A Anything I heard from, they were congratulations for
7 what a good job we were doing.

8 Q Okay. How about the employees? Was there any health
9 review for your employees at the Kaylo plant, sir?

10 A Yes. Long before there was such a thing as Kaylo,
11 Owens Illinois was aware that all loose minerals --
12 loose minerals could be potentially hazardous. And
13 after all in the glass business we had a lot more loose
14 minerals; soda ash, sand, lime, feldspar, et cetera,
15 down the line. Owens Illinois was aware that silica
16 could cause silicosis, and therefore we had what I call
17 a silicosis program, which meant that any one working
18 anywhere where there were any loose minerals, and that
19 would be where they were unloaded, when they were
20 brought in the factory or where they mixed them in the
21 batches, so forth. They had rather stringent rules as
22 to how they were to conduct themselves. They wore
23 respirators in that area and the company would see to
24 it that they had a chest ray -- chest x-ray once a year
25 to monitor their health and be sure that nothing

1 adverse was happening, and these were read, not by our
2 people, but by experts outside the company.

3 When Kaylo came into being that procedure was
4 immediately applied and the people in the plant, those
5 that were exposed to excessive amounts of -- of loose
6 minerals, one kind or the other, were given chest
7 x-rays also and precautions were taken in accordance
8 with company rules so that most of the people that
9 worked in that small plant in Berlin had to -- chest
10 x-rays and they were read by what I have since learned
11 was the Saranac Lab people. They were the experts.
12 Never had any problem. Never had any indication of a
13 problem and the best I see -- I worked there two years
14 and I was never more than 40 or 50 feet away from all
15 the cutting and grinding that was going on, so --

4
16 Q Sir, I have asked you to go back 35 years or more
17 today. You told us an awful lot of detailed
18 information about the things that you did and saw. How
19 is it that you remember after all these years? How is
20 it that that stuff sticks in your mind?

21 A Well, the only way I can answer that is, as you recall
22 I didn't quite get a degree, and like it or not that
23 can be a little bit of a stigma, and that assignment
24 was the first opportunity I had to show what I was
25 capable of doing with managing a business that was in

1 trouble. And believe me, I lived with it day and night
2 and I remember what happened.

3 Q Now, sir, you indicated you do some consulting for
4 Owens Illinois in the radio or television product area;
5 is that correct?

6 A Well, during the -- during the last ten years that I
7 was with the company I spent most of my time in T.V.
8 products. And I had a number of contracts outside of
9 the country regarding our technology and so forth, and
10 some of those contracts are still ongoing, and
11 Owens Illinois from time to time gives me a modest
12 retainer and from time to time I am asked to answer
13 questions or to say, well, what did actually happen
14 here or what was the understanding whenever it comes
15 up, but it's a very modest thing.

16 Q But -- but T.V. products, that's the subject?

17 A Primarily that. Other things -- I've been asked
18 questions about other things. I did fiber cans, for
19 instance, so forth.

20 Q All right. How much money, for example, does that
21 consulting work provide you in a year?

22 A Well, I don't know what it's going to be this year but
23 I can tell you what the total amount of money that I
24 received for 1988, last year, is. Does that answer
25 your question?

1 Q Sure. That would be fine.

2 A I got \$5,500 total.

3 Q All right. Now --

4 A For the year.

5 Q Do you receive a pension as a retired employee of
6 Owens Illinois?

7 A Yes.

8 Q Is that a vested --

9 A Yes.

10 Q -- pension?

11 A It is.

12 Q Is it in any way dependent on your given testimony
13 with --

14 A No, it's vested. They can't take it away from me.

15 Q All right. Have you ever owned stock in
16 Owens Illinois?

17 A At one time, yes.

18 Q Bought it with your own money?

19 A Oh, bought it with my own money, a payroll deduction.

20 Q Do you own it today?

21 A No.

22 Q You sold it?

23 A It's sold.

24 Q Sir, you have testified in cases like this on more than
25 one occasion. Is that correct, sir?

1 A Yes.

2 Q Numerous times?

3 A Yes.

4 Q Do you get paid for coming into a courtroom like this
5 to give testimony?

6 A Not for testifying. They pay my hotel -- my hotel and
7 meals while I'm here. They pay for my plane tickets,
8 but I don't get paid for testimony, no.

9 Q Nothing beyond the expenses of traveling?

10 A Nothing.

11 Q Well, if you don't get paid, sir, why is it at age 75
12 that you're willing to come and give your testimony?

13 A Well, as you get older you start thinking about things
14 a little differently than you did when you were
15 younger, but as I see it I'm without a doubt the last
16 person who is -- who was once part of the management of
17 this division that is still alive and physically
18 capable to come here and tell you my story, tell my
19 experiences in the Kaylo Division. I was there. I
20 know what we knew then. I know what we did then. I
21 know what company policies were at that time and I feel
22 that that testimony would be helpful to this court or
23 any court and I am not going to taint that testimony by
24 taking money for it.

25 MR. RILEY: Thank you, Mr. Schillaci. No

1 further questions.

2 THE COURT: Okay. Anybody else have any?

3 MR. MURPHY: I have nothing.

4 MR. BOGAN: No questions.

5 THE COURT: Okay. Mr. Hart, it's up to you, I
6 guess.

7 CROSS-EXAMINATION

8 BY MR. HART:

9 Q Hello, Mr. Schillaci.

10 A How are you?

11 Q How you doing, sir?

12 A Fine.

13 Q I know sometimes you need to adjust to a new speaker in
14 terms of enunciation, so if you will get adjusted and I
15 want to ask you a few questions.

16 I met you, I think, on one prior occasion; is
17 that correct?

18 A I believe so. Yes.

19 Q That was on a trial?

20 A I remember your face.

21 Q That was a trial in Kansas?

22 A Yes.

23 Q Okay.

24 MR. RILEY: Excuse me. I don't want to
25 interrupt. I want to make sure Mr. Schillaci has

1 enough water.

2 THE WITNESS: Thank you.

3 Q (By Mr. Hart) Mr. Schillaci, you're 75 now?

4 A I was 75 last September 26.

5 Q Okay. And truth be known, you really haven't quit,
6 have you? You are still doing things that you want to
7 do.

8 A Well, I think I retired about four times, then I
9 thought better of it.

10 Q You didn't -- you didn't really quit at 65, did you?

11 A Well, I was 66 when I retired, "retired" from
12 Owens Illinois and was no longer an employee of
13 Owens Illinois.

14 Q But you --

15 A I was held -- I was kept on retainer for the purposes I
16 have just described.

17 Q Right. Even though you reached 65 or 66 you have kept
18 active, have you not?

19 A More or less.

20 Q Kept doing the things that you wanted to do?

21 A Yes.

22 Q Okay. And some of those things produce income and some
23 of them do not?

24 A Most of the time not.

25 Q Yeah. But you have been able to do what you wanted to

1 do since then; is that correct, sir?

2 A Well, within limits. If my wife would permit me.

3 Q Right. I think we all have that limitation.

4 A I have been married to a fine gal for 52 years but she
5 at times can set the limits.

6 Q Congratulations. Now, the Kaylo you remember making in
7 '52 to '54, you said it was kind of expensive?

8 A You will have to come back with that again.

9 Q The Kaylo that you made in 1952 to 1954, you told the
10 Jury it was kind of expensive compared to other
11 products. I just want to ask you what was the cost of
12 Kaylo?

13 A I don't remember that specifically. All that I
14 remember in relation to -- to other competitive
15 products, our costs were higher but we had to sell at
16 competitive prices and that was the crux of our
17 problem. That's why we were losing our shirt.

18 Q Was your product -- how much would a three foot section
19 of pipe covering have cost back then? We talking about
20 dollars or cents or what?

21 A Well, depends on the size of pipe that you are to put
22 it on. Depends on how thick it was. And there was
23 quite a range. I mean, it was one inch pipe and half
24 inch thick insulation that would be, let's say, x
25 amount for prices. I don't remember those. I'm not

1 that good, but if it was two inch pipe, two inches of
2 insulation, then it would be ten times what the
3 one-inch pipe was. I don't know.

4 Q Okay.

5 A There was quite a range there.

6 Q I understand. I just didn't know whether you recalled
7 it or not.

8 A No.

9 Q No. Now, Illinois and Owens-Corning Company, in the
10 past, particularly when you joined them, had some sort
11 of relationship; is that correct?

12 A Well, at one time Owens Illinois had considerable
13 amount of stock in the company, if that's what you
14 mean.

15 Q Yes, sir. Yes, sir. Owens Illinois created
16 Owens Corporation along with another company; is that
17 correct?

18 A Owens Illinois and Corning Glass Company together
19 merged -- pooled their patents and know-how to form
20 Owens-Corning Fiberglas.

21 Q And Owens Illinois assisted Owens-Corning Fiberglas in
22 the development of things like fiberglass and the other
23 insulation materials?

24 MR. RILEY: May we have a time frame to the
25 question?

1 Q (By Mr. Hart) In the '40's.

2 A Well, now you are -- you are talking about something
3 that is not within my camp of knowledge and expertise.
4 All I can tell you is that I read in -- somewhere in
5 the documents that in about 1935, '36, something like
6 that, that two companies pooled their interests.
7 That's about as far as I go, and then Owens-Corning
8 Fiberglas was a separate entity and development went
9 from there, and that's about the extent of my knowledge
10 of what happened and who did what.

11 Q Okay. Do you know if Bill Hazard did the industrial
12 hygiene for Owens Illinois, assisted Owens Corporation
13 maybe or was it a health matter in 1940?

14 A I would have no knowledge of that.

15 Q He never told you of that matter?

16 A I have no knowledge of that whatsoever, one way or the
17 other.

18 Q Now, in 1953 you had been in the Kaylo Division for
19 about a year and you recommended, number one, that they
20 stop making the door core at the Sayreville plant.
21 That was one of your recommendations; is that correct?

22 A Yes, that was one.

23 Q Okay. So they shut it down, shut down Sayreville,
24 correct?

25 A Yes.

1 Q And the only plant remaining was Berlin, New Jersey,
2 correct?

3 A That's correct.

4 Q And Berlin, New Jersey's plant was the one that was the
5 original Kaylo plant, that is the paylot plant that
6 began test marketing materials back in 1953; is that
7 correct?

8 A That was the paylot plant, yes.

9 Q And it always made pipe covering and insulating block;
10 is that correct?

11 A Not in the --

12 Q I'm talking about before the Sayreville plant closed.

13 A Well, now wait a minute. Let's -- let's get --

14 Q Sure.

15 A Are you talking about from 1948 or?

16 Q Yes.

17 A Yes, that's all that was made at the -- at the --

18 Q Berlin?

19 A -- Berlin plant, except for the times that they had to
20 make this core material to replenish the supply, which
21 they would do periodically as it was needed. Other
22 than that they made only the two products.

23 Q So before -- before 1953 the only thing made at Berlin
24 was insulation for pipe covering and block; is that
25 correct, from 1948 to 1953?

1 A That is all they were making there, yes, just pipe
2 covering and block.

3 Q Then after 1953 the majority of material they made was
4 pipe covering and block and then occasionally they
5 would make an order of or make a run of this door core
6 material?

7 A Yes. Yes. If I would have to guess, the door core
8 material was made either when -- just about the time
9 that I left, which was maybe '54 or a little after. I
10 know it was set up to do it and they -- they ran door
11 core after that on other occasions. I'm aware of it.
12 I don't know specifically when.

13 Q Generally it was infrequently that they made door core
14 material at Berlin; is that correct?

15 A Oh, yes, because it was not one of the things that you
16 would want to do.

17 Q Now, you talked about going to New Jersey and working
18 with the Berlin plant and Sayreville plant when you
19 first got your assignment; is that correct?

20 A Mr. King took over the Sayreville plant, I took over
21 that business at the Berlin plant, so that was my part
22 of the assignment.

23 Q Mr. King -- and you told us that you tried to learn all
24 you could about the Kaylo manufacturing process; is
25 that correct?

1 A Yes.

2 Q Did you try to learn all that you could about the
3 marketing aspect of Kaylo?

4 A That's the reason for going into the field as often as
5 I did.

6 Q Did you conduct any investigation into the health
7 aspects of Kaylo in 1952? Did you, yourself?

8 A To the extent that I have just stated. Mr. --
9 Mr. Hazard was asked whether a product had been tested
10 in -- in accordance with company policy and the answer
11 was yes. And his answer was it was safe to handle, and
12 there was no reason for me personally to pursue it
13 beyond that because he knew his business. He knew the
14 company policy. I saw no reason to pursue it and I did
15 not.

16 Q Just so that we're clear, you didn't ask Mr. Hazard,
17 Mr. King asked him that question?

18 A Yes. We were there --

19 Q Okay.

20 A -- at a meeting together.

21 Q Right. Now, the reason why you wanted to know all you
22 could about Kaylo was to do your job better; is that
23 correct?

24 A Well, I had to learn that business in order to make the
25 judgments necessary to carry out the assignment.

1 Q Okay. And you had to know as much information as
2 possible to help you in making that; is that correct?

3 A Yes.

4 Q Okay. Now, the policy that you had for protecting your
5 workers from all types of dust you said went back for
6 many years?

7 A Oh, yes. I was aware of it when I first came to the
8 company in 1932.

9 Q Okay. When did they tell you what dusts were
10 dangerous?

11 A Well, Owens Illinois, making glass, used a great deal
12 of minerals and they were aware that all loose minerals
13 are potentially hazardous. That was drilled into
14 everybody that came into the plant, I know, anybody
15 that came in.

16 Q Did they tell you, sir, which dusts were dangerous?

17 A All dusts, all minerals. That's the way it was -- it
18 was told us. Treat them all as being dangerous. We
19 always thought of all minerals as being potentially
20 dangerous.

21 Q You knew silica caused silicosis when you --

22 A I remember hearing about it in the early years, yes.
23 At that time I wasn't too concerned about it.

24 Q Then you were aware silica caused silicosis, right,
25 when you went into the Kaylo Division?

1 A Yes. Yes.

2 Q You had workers use respirators because of the risk of
3 dust, silica dust?

4 A Where there was loose minerals, yes.

5 Q Okay. You didn't even -- you never were told by your
6 own company in 1953 that absestos could cause
7 asbestosis, were you, sir?

8 A Not specifically, no.

9 Q You didn't even hear about asbestos until about 1979;
10 is that correct?

11 A That's a statement that I have made. I may have heard
12 of it. I don't remember specifically making any
13 reference to it until about that time, yes.

14 Q Okay. So in all the times you testified you can never
15 recall your own company ever telling you one time that
16 asbestos caused asbestosis until you learned about that
17 generally through the newspapers in 1979?

18 A No. No. No. Specifically asbestosis? No, I never
19 had any discussion, but all loose minerals and asbestos
20 is a mineral. It was all treated as potentially
21 dangerous in its loose form.

22 Q And you took precautions for your workers to protect
23 them from hazardous minerals but you didn't tell them
24 that asbestos in particular was dangerous, did you,
25 sir, when you were at the Berlin plant?

6

1 A I don't know whether anybody was specifically told or
2 not, but the rules were such and they were set by
3 people in industrial hygiene levels that that
4 certain -- the rules, if followed, would make the place
5 a safe place to work and that -- and they had to be
6 followed and supervised. Incidentally, when I became
7 supervisor that was drilled into us, to make sure that
8 your people followed the rules. Our company was very
9 stringent on these things.

10 Q Okay. Did you post signs? Did you post signs
11 concerning these safety rules in the plant?

12 A Well, I'm sure there were. I don't remember
13 specifically how it was, but I can assure you that
14 there was no one that worked in any area that had
15 specific rules to follow that didn't know about it,
16 whether it was written or repeated every day or
17 whatever.

18 Q Did you provide respirators? Was that one of the
19 rules, people had to use respirators when there was
20 dust in a dusty area?

21 A Where they unloaded loose raw materials or where they
22 mixed the loose raw materials, that's the only places
23 respirators were required and that was strictly a
24 precaution on top of a precaution.

25 Q Didn't you have respirators available for people doing

1 the sawing of Kaylo with the bench saw?

2 A None was necessary.

3 Q Didn't you have respirators available for people doing
4 the sawing?

5 A Doing the sawing?

6 Q Yes, sir.

7 A Where?

8 Q At the bench saw?

9 A No. There were no respirators there. We had dust
10 collecting systems.

11 Q Okay. You had a suction device that would remove the
12 dust as it was being cut?

13 A We had a system where all of this work was done that
14 would keep the dust level within the -- the -- what was
15 specified by the State of New Jersey and there were
16 some other ones. I'm not exactly clear on that, but
17 there were some licenses we had to comply with those
18 elements and we did. We have.

19 Q Dr. Schall was the person in the State of New Jersey
20 who was responsible for industrial hygiene, was it not?
21 Lynn Schall, do you know him?

22 A The name does ring a bell, but --

23 Q Now, the -- those suction devices was to remove the
24 dust while the sawing was going on; is that correct?

25 A Yes. There was extensive sawing. It was done eight

1 hours a day, eight hours a shift, 24 hours a day and it
2 was constant, yes. So that was --

3 Q Okay. If the suction devices were not attached or
4 working you would expect dust to have been produced
5 from those machines, would they?

6 A Dust would have been, yes.

7 Q Dust in the air?

8 A Well, to what extent I don't know, but I would assume
9 some would be there, yes.

10 MR. RILEY: Excuse me. Your Honor, I would
11 object, that's speculation since the fans were going.
12 He's not an industrial hygienist, Your Honor.

13 MR. HART: He said he was experienced in all
14 modes of the plant, Your Honor. I was asking about one
15 mode. I'm going on to something else now.

16 THE COURT: Okay. We'll let it stand.

17 Q (By Mr. Hart) Mr. Schillaci, you went to the shipyards
18 twice. Now, that wasn't near Wisconsin, was it?

19 A No. It was somewhere on the east coast. I don't
20 remember specifically which ones they were. East coast
21 somewhere.

22 Q And the only work you saw being done with the Kaylo was
23 merely notching out pieces of Kaylo to fit it on the
24 pipe; is that correct?

25 A Well, I don't remember exactly what they were doing. I

1 know that I had to get there at a specific time because
2 they wouldn't be working -- working with our product
3 very long because there wasn't going to be very much to
4 be applied. So I had to get there at a specific time.
5 I can only say this, if it was hung by anything they
6 would have to notch where the hanger would be. I don't
7 remember specifically those. The only thing I remember
8 about those two shipyards, that the most hazardous --

9 Q Let's -- don't get to anything else. I just want to
10 talk about Kaylo, because those shipyards may not be
11 anything like what was here in Wisconsin.

12 A I'm sorry.

13 Q Any way, did you ever see him cutting the Kaylo with
14 the skill saw on those shipyards?

15 A Skill saw? Is that one of those power saws?

16 Q Yes.

17 A No. No. No. There was never that much cutting that I
18 know that had to be done.

19 Q Did you ever see Kaylo block being cut with a skill
20 saw?

21 A I never saw it, no, sir. I never saw it used with a
22 power saw.

23 Q So you don't know whether or not that would produce
24 dust? Is that fair?

25 A I never saw it cut with a skill saw so I can't answer

1 that question.

2 Q Okay. Now, the Kaylo that you made and that was sold
3 to the shipyards was the same Kaylo that you sold to
4 other industrial locations; is that correct?

5 A Oh, yes. It would be the same.

6 Q There was nothing especially different with the Kaylo
7 that was sold to the shipyards from the Kaylo that you
8 sold elsewhere; is that correct?

9 A No. There would be no difference.

10 Q It wasn't specifically designed to go on a ship, was
11 it, as opposed to someplace else.

12 A No. The product had a k-factor. It was a measuring
13 device for how much insulation would on a
14 specification. It would fit one inch or two inch,
15 whatever it was made for. Other than that it would be
16 the same regardless of where it was being applied.

17 Q It was made to go on hot pipes where ever those hot
18 pipes were being used?

19 A Yeah. It was a insulating material, yes, sir.

20 Q Now, one of the hazardous dusts that you were familiar
21 with was diatomaceous earth; is that correct, sir?

22 MR. RILEY: I'm going to object to that
23 testimony. The testimony has consistently been with
24 reference to loose minerals. That misstates prior
25 testimony.

1 THE COURT: Let me have that question read
2 back.

3 (Previous question read by reporter)

4 THE COURT: Assumes a fact not in evidence.
5 Objection sustained on that basis.

6 Q (By Mr. Hart) Do you know if it is hazardous,
7 diatomaceous earth, sir?

8 A No. No more than I did of any other, the fact that it
9 was another mineral, period.

10 Q Did you ever see warnings on backs of diatomaceous
11 earth beginning in 1952?

12 A No.

13 Q Oh, let's talk about how you made Kaylo. We know we
14 had asbestos in there and something called calcium
15 silicate?

16 A 85 percent was equal parts of sand and lime and
17 15 percent was chrysotile asbestos.

18 Q Okay. So you would have some sort of device. You
19 would first of all mix the material in; is that
20 correct? What would it be? Was it a hopper?

21 A Material came to the mixing floor and it was mixed
22 together with water into a slurry about the consistency
23 of wet concrete and it would pour.

24 Q So you would put in the lime, what was it, limestone,
25 the other materials and the asbestos?

1 A Lime and sand and the little asbestos and they were all
2 mixed together with water to a consistency that I just
3 described, then it was conveyed to the -- to the room
4 where it was poured into molds.

5 Q Okay. It was put into molds and the molds would be the
6 shape that you wanted the Kaylo to come out in?

7 A A mold in the case of -- of a pipe covering was a piece
8 of sheet metal 36 inches long, bent half load end
9 pieces so it would stand up. That was the female part.
10 There was a male part that fit into a -- with a spacer
11 so you could pour around it and that would produce a
12 part that looked like a piece of sur pipe cut in half
13 horizontally so the two pieces could go together
14 covering the circumference of a pipe.

15 Q Now, what's an autoclave?

16 A An autoclave is a pressure cooker --

17 Q Okay.

18 A -- if you will. I don't mean to be facetious, but
19 it's a chamber in which you can reduce the heat and
20 pressure and you can close it so that whatever you have
21 in there is subject to that condition.

22 Q Did you have any autoclaves in the making of Kaylo?

23 A Yes. Part of the process was that after you poured the
24 slurry in the molds you put it on trucks and then you
25 formed a train. And when we had about 25 feet of train

1 you would take it to the autoclave, and in our case an
2 autoclave was a huge cylinder about 28 feet long with
3 doors at both ends and tracks running down the middle,
4 and you run this train into it, close the doors and
5 apply high pressure steam. This could cause a chemical
6 reaction to take place immediately, and this happened
7 so fast that the water is driven out and where the
8 water had been you would have literally millions of
9 little tiny air bubbles in each piece and that is what
10 gave the material its insulating properties.

11 Q So this autoclave would dry out the material?

12 A Yes. It had a -- depending on how long -- how thick a
13 piece you were making it would have a drying cycle of
14 three to five hours, then you would take it out and you
15 would strip it from the mold and then you send it to
16 the finish room.

17 Q And how hot was your autoclave? Was it about
18 400 degrees?

19 A I don't know. All I know is -- all I know is we
20 applied high pressure steam. You are getting
21 technical. I knew at one time. I don't know
22 specifically now. I'm not going to give you a number
23 because I don't know. I don't remember, rather.

24 Q High pressure steam. So it was hotter than boiling
25 water?

1 A Yes. Yes.

2 Q Oaky.

3 A It is --

4 Q Okay. And would three to 400 degrees be the range?
5 I'm just asking. If you don't know tell me you don't
6 know.

7 A I just don't.

8 MR. RILEY: I think he said I don't know.
9 Object.

10 Q (By Mr. Hart) Okay. That's fine. Now, the effect of
11 autoclaving would be to dry out the material and to
12 make little pockets of air in there?

13 A No. The -- the primary thing was to get the material
14 set up, harden and do it so fast that you would drive
15 the water out and thereby creating those little
16 vacuums, those little bubbles of air, if you will. And
17 that would then in part be the insulation -- the
18 insulating properties to that material. That's why it
19 was such a good high heat material.

20 Q Okay. Now, during the time you've been consulting with
21 the company you have reviewed a number of documents,
22 have you not?

23 A Yes. Not all of them but here and there. Some
24 milestones, um-hum

25 Q Are you familiar with the fact that when you were there

1 and afterwards the Kaylo manufacturing process was
2 being experimented with? Different materials were
3 being tried out for experimental purposes; is that
4 correct?

5 MR. RILEY: Excuse me, Mr. Schillaci, an
6 objection.

7 I want to inform the Court --

8 THE COURT: Okay. Jurors, we are going to
9 have to excuse you for a few minutes. There is a
10 couple of questions we would like to ask the witness
11 outside of your presence, then we'll have you back.

12 (Jury exits courtroom)

13 THE COURT: For those of you who are here for
14 1:30 matters, we'll get to you shortly. We haven't
15 broken for lunch yet, so this is nothing that we have
16 picked up after lunch. We have worked through the
17 lunch hour, and we'll get to you as soon as we can.

18 MR. HART: May I go forth?

19 THE COURT: Go ahead.

20 Q (By Mr. Hart) Mr. Schillaci, let me show you
21 Exhibit 439.

22 THE WITNESS: We have a little problem.

23 THE COURT: Maybe Owens Illinois could come up
24 with a product that doesn't leak.

25 THE WITNESS: These are not Owens Illinois.

1 These are not Owens Illinois, I'll guarantee that.

2 Q (By Mr. Hart) Did I -- let me show you Exhibit 439.

3 And this is -- do you recall having seen this in your
4 consultations with the company?

5 MR. RILEY: Time frame, please, in the
6 question.

7 A I think I have seen this document before. It's dated
8 August 20, 1957, this is.

9 Q (By Mr. Hart) Is that one of the things the lawyers
10 have shown you during your consultations?

11 A I -- no. No. No. I think that came up at a trial, I
12 believe Seattle.

13 THE COURT: That's good enough. That's not a
14 basis for questioning this witness on that document.

15 MR. HART: Okay. Your Honor, I would like to
16 go ahead and make a proffer, if I may, concerning the
17 document --

18 THE COURT: Okay.

19 MR. HART: -- outside the presence of the
20 Jury.

21 Q (By Mr. Hart) Mr. Schillaci, do you see the statement
22 here, Kaylo molded pipe covering in 1955 was produced
23 at the plant from a formulation in which all of the
24 asbestos was of the chrysotile type, and this product
25 exhibited k-factor at 550 degrees fahrenheit, mean of

1 point 70. Do you see that statement, sir?

2 A Yeah.

3 Q Let me show you back here on Table 1 on Page 8. They
4 experiment with k-factors in 1955, Kaylo, Test No. 1a.
5 Plant 1955, 20 percent chrysotile. Do you see that,
6 sir?

7 A I read that.

8 Q Okay. Does that plant -- and it shows the k-factor is
9 point 70. That was referred to earlier.

10 A Well, I read that, yes.

11 Q Okay. Does that plant 1955 refer to Kaylo that was
12 being manufactured for production in the plant?

13 A No. That would not be that. I don't know. That would
14 not be it. See, this is -- this is a -- this is
15 research. This would probably be at a test that was
16 made and the results are rather recorded as to what
17 their findings were.

18 Q Let me show you here, sir, Table 1, Appendix C. Do you
19 see where the term laboratory, Kaylo, 20, and it has
20 information about the composition and also has Plant
21 Normal Kaylo, first of all, Normal Kaylo was the low
22 density Kaylo?

23 A Well, it was a --

24 Q Low temp Kaylo?

25 MR. RILEY: I don't think that's correct. I

1 object. There is no foundation this is the author of
2 those words or that he has any understanding what the
3 author meant. It calls for speculation.

4 THE COURT: Sustained. It just seems to me,
5 the record that we're making, that this witness
6 consistently is saying that he is not familiar with the
7 contents of this document.

8 MR. HART: I'm making a proffer for future
9 record. I understand your ruling.

10 THE COURT: I know, but I understand that.
11 But we're trying to get the witness to answer questions
12 to which he doesn't know the answers and I don't see
13 how we can do that in the form of offer of proof.

14 MR. HART: Well, let me go through these
15 questions, Your Honor. I'll see if he knows the
16 answers. He can say yes or no if he doesn't know.

17 MR. RILEY: Excuse me a second. For the
18 record, once it is established there is no foundation I
19 think the rules of evidence prohibit, even under an
20 offer of proof, going through and insisting the witness
21 tell you time and time again if responses to successive
22 questions -- when he's already told you he didn't
23 author the document, and there isn't any foundation to
24 testify to its meaning.

25 Q (By Mr. Hart) Did you discuss this document with

1 Mr. Riley last night?

2 A Yes.

3 Q Okay. He went over these terms with you?

4 A No. Not in any great detail, because when he showed it
5 to me I said I have seen this before. An attorney for
6 a plaintiff, I believe it was Seattle, Washington, I'm
7 not sure of that, had brought this up and I had seen it
8 at that time. There was no need for me to get involved
9 with it because I'm not a scientist.

10 Q Was that product called Kaylo 20 that was made in
11 Berlin?

12 MR. RILEY: Your Honor, we're pretty far field
13 now.

14 THE COURT: Listen. My concern is that we had
15 some arrangement what we were going to try to handle
16 today.

17 Mr. Hart, you are the one who said we didn't
18 want to go late on Friday if we're going to come back
19 on Monday morning. Now, if you want to take the time
20 on this, fine, but we're going to do it after we do our
21 1:30 pretrials and after we see what happens on the
22 other trial. I'll put this over to either this
23 afternoon if that's what you want to -- want to do,
24 otherwise, move around it.

25 MR. HART: May I ask certain questions on the

1 ruling? I cannot at this time. I'm just asking for --
2 what the Court's instructions are. You want me to move
3 on?

4 THE COURT: I -- yes. I think we should move
5 on. I think you have had an ample opportunity to ask
6 him questions about that document.

7 MR. HART: I'm ready for the Jury, Your Honor.

8 THE COURT: Okay.

9 (Jury enters courtroom)

10 THE COURT: Be seated, please.

11 Go ahead, Mr. Hart.

12 MR. HART: Thank you, Your Honor.

13 Q (By Mr. Hart) Mr. Schillaci --

14 A Yes, sir.

15 Q -- let me show you Plaintiff's Exhibit 14, which is a
16 letter dated February 12, 1943 which has been
17 previously identified initiating certain studies on
18 Kaylo with the Saranac Laboratory.

19 A Yes. I have seen this before. This means that
20 Mr. Bowes, who was in charge of research, started what
21 company policy dictated, tested the product.

22 Q And they asked the Saranac Laboratory to consider the
23 product from the standpoint of employees working in the
24 plant; is that correct? Right down here.

25 A Yes.

1 Q And also from the standpoint of applicators to erectors
2 at the point of use?

3 A That's what it says.

4 Q What would -- that would be from the point of view from
5 insulators?

6 MR. RILEY: Your Honor, there is no
7 foundation. This witness testified he didn't see the
8 documents during that period of time itself and only
9 substantive. This could be directed more toward Mr.
10 Hazard, not this witness.

11 MR. HART: Your Honor, he brought these up on
12 direct. He referred to these studies and the fact he
13 became familiar with them.

14 THE COURT: Let me see where.

15 MR. RILEY: So the record is clear, what we
16 established on direct is that he did not review those
17 documents. The witness did not review the documents
18 from 1952 through '54.

19 THE COURT: You are through with this one?

20 MR. HART: Yes.

21 THE COURT: I don't see anything. You are
22 through with this.

23 MR. HART: Okay.

24 Q (By Mr. Hart) The company was told by Mr. Gardner that
25 the fact that you're starting with a mixture of 2

1 quarts asbestos would certainly suggest that you have
2 all the ingredients of a first-class hazard. Do you
3 see that?

4 A That's what it said.

5 MR. RILEY: Same objection, Your Honor. This
6 witness didn't ever see these documents during the
7 relevant time periods. If you want to direct a
8 question like that to Mr. Hazard, that would be proper,
9 but not for Mr. Schillaci.

10 MR. HART: The document is in evidence. I
11 just want to ask that question about that statement
12 that was not made to him.

13 THE COURT: Objection overruled.

14 Q (By Mr. Hart) Mr. Schillaci, my question to you is,
15 sir, in 1952 when you were trying to gather all the
16 information about Kaylo, did your company ever tell you
17 of that statement or --

18 A No. No reason to.

19 Q Okay.

20 MR. HART: I move that that be stricken, too,
21 Your Honor, "no reason to." I just simply wanted to
22 know whether he was told that.

23 THE COURT: His answer will stand.

24 Q (By Mr. Hart) Do you see the report, November, 1948
25 from Dr. Verwald to Mr. U.C. Bowes?

1 A Yes.

2 Q Okay. It says, I realize that our findings regarding
3 Kaylo are less favorable than anticipated. However,
4 since kaylo is capable of producing asbestosis, it is
5 better to discover it now in animals rather than later
6 in industrial workers. Thus, the company, being
7 forewarned will be in a better position to institute
8 adequate control measures for safeguards regarding
9 those exposed employees, and protecting its own
10 interest. Were you ever advised of that, sir?

11 A No.

12 Q What safeguards were employed to protect the workers in
13 the plant?

14 A Sir?

15 Q What safeguards were employed to protect the workers in
16 the plant manufacturing Kaylo?

17 A What I have been describing all -- all afternoon.

18 Q What safeguards were employed to protect the
19 applicators at the point of use or users of the
20 products?

21 MR. RILEY: Objection. There is no foundation
22 of those not people, Owens Illinois employees at his
23 plant. He doesn't know what the employers of the
24 people in the shipyards did or didn't do for those
25 workers.

1 MR. HART: I'm asking what Owens Illinois did
2 for them, Your Honor.

3 MR. RILEY: He's not in a position to respond
4 to that.

5 MR. HART: Your Honor, I think that's the law.
6 A manufacturer has certain responsibilities.

7 MR. RILEY: I object.

8 That is a mischaracterization of the law,
9 Mr. Hart.

10 THE COURT: I think indirectly what he's
11 asking is whether or not there were any warnings given.
12 And if he's asking that, I think that he can ask this
13 witness if he knows of any warnings that were given.

14 MR. RILEY: That question I have no objection.

15 Q (By Mr. Hart) What warnings or anything else, what did
16 the Owens Illinois Company do to protect industrial
17 workers whom the projects and the tests were designed
18 to explore?

19 A Well, I don't understand the connection, sir, so I'm
20 confused.

21 Q What, if anything --

22 A This is an interoffice report.

23 Q I'll restate the question for you, sir.

24 A Had nothing. About half way through the testing period
25 of six years -- this is three years.

1 Q The final report came out in 1952. Did they ever give
2 you that one?

3 A I have read it since I became involved.

4 Q The lawyers give it to you? Owens Illinois ever give
5 it to you in 1952?

6 A No.

7 Q When you got the report and you were heading up the
8 Kaylo Division? Did they ever, sir? Just yes or no.

9 A The answer is no.

10 Q Okay. What, if anything, did Owens Illinois Company do
11 to protect applicators of Kaylo insulation products?
12 What did they do?

13 MR. RILEY: Excuse me. I want to interpose an
14 objection. This is the plant manager in Berlin,
15 New Jersey. There is no foundation that this witness
16 can answer that question. It's not in his job area.
17 He's --

18 THE COURT: To the extent of his knowledge. I
19 think he's already answered it. He's been asked it and
20 objection is sustained on that basis.

21 Q (By Mr. Hart) Do you know why the company didn't
22 bother to tell you, sir, about the results of these
23 experiments?

24 MR. RILEY: Objection.

25 A There was no reason to.

1 THE COURT: Sustained.

2 MR. HART: Thank you. That's all I have.

3 THE COURT: Redirect.

4 MR. RILEY: Just a few.

5 REDIRECT EXAMINATION

6 BY MR. RILEY:

7 Q Mr. Schillaci --

8 A Yes.

9 Q -- were all of these Kaylo products, roof tile, door
10 core, block and pipe covering, developed in the paylot
11 plant efforts that were made at Berlin?

12 A Yes. Everything was done.

13 Q In those early years?

14 A Berlin. In the paylot plant, yes.

15 Q You testified several times yourself that all loose
16 minerals represented a potential hazard. Did you
17 consider the finished Kaylo pipe covering to be loose
18 minerals?

19 A No. Of course not.

20 Q Okay. You referred in the plant to constant sawing,
21 eight hours a shift, four hours a day at Berlin. When
22 you went out in the shipyards did you see that kind of
23 constant sawing, piece after piece, 24 hours a day?

24 A Heavens no, and if I hadn't been quick I wouldn't have
25 seen the installation. It was that fast. It was

1 used -- this is a special premium type product and it
2 was used very sparingly where you had excessively high
3 temps.

4 Q Was it made in standard lengths?

5 A It was made in -- yes, 36 inches long.

6 Q Based on observations did every piece of Kaylo pipe
7 covering have to be cut to be applied on a pipe?

8 A No. No. Pipe covering was made in two parts, as I
9 have indicated, and it was wrapped with cotton, a
10 material, and that was pasted on in such a way that on
11 the job all that you had to do was to open it up, clamp
12 the shell, put it over. We always allowed little extra
13 piece of cotton material so you just pull that up at
14 the bottom and paste over that and it was in place.
15 The only time you had to do any cutting is when you
16 came to an end. If you had an excess, then you would
17 have to make a minor cut to turn a corner or on
18 occasion if you were hanging some piece you might have
19 to take one of these notches and notch a hole. That
20 was the extent of the cutting that -- that had to take
21 place in pipe covering.

22 Q Mr. Hart asked about Kaylo in shipyards and Kaylo in
23 other commercial business.

24 A Yes.

25 Q When Kaylo was being used in a military ship did it

1 have to meet military specifications?

2 A I assume so, yes.

3 Q You have told us about what Mr. Hazard said in response
4 to Mr. King's question about whether or not the
5 product, Kaylo pipe covering, had been tested.

6 A Yes.

7 Q Were you, sir, as an Owens Illinois employee satisfied
8 with Mr. Hazard's advice to you?

9 A Absolutely.

10 Q And why, sir?

11 A Well, first of all I known him for many, many years. I
12 knew what his background was. I knew what his basic
13 education was. I knew he was a man of integrity, and
14 most important of all I knew that he knew -- knew what
15 the company policies were and how he felt about them
16 being followed. So there was no reason -- when he said
17 this is our considered opinion, there wasn't any reason
18 to question him and I never did.

19 Q Thank you, sir.

20 MR. RILEY: Nothing further.

21 THE COURT: Further cross.

22 RECROSS EXAMINATION

23 BY MR. HART:

24 Q You don't know anything about the shipyards in
25 Sturgeon Bay; is that correct?

1 A No, sir. I do not.

2 Q You don't. You have never been on a -- the
3 construction of a wooden mine sweeping vessel where it
4 is important to insulate materials greater than in
5 other ships?

6 MR. RILEY: That's a fact no in evidence in
7 terms of relative importance. This is also
8 duplicative.

9 THE WITNESS: Sir, I lost you after the part
10 of the question that said you have never been on a
11 wooden ship, whatever it was. Beyond that it escaped
12 me.

13 MR. HART: I'll ask you a different question.

14 Q (By Mr. Hart) You don't know whether or not the
15 experiences that you have with Kaylo on a shipyard are
16 any way like they were using Kaylo in --

17 MR. RILEY: Objection. Asked and answered.

18 A I have no basis to judge that.

19 Q (By Mr. Hart) Mr. Hazard, when he had these
20 conversations with you, did he ever relate to you what
21 Dr. Garrett Schippers (phonetic) had told him about
22 Kaylo?

23 A No.

24 Q Did he ever tell you that Dr. Garrett Schippers had
25 recommended that these x-rays -- plans be put into

1 effect at the Berlin, New Jersey plant to measure the
2 effect of asbestos?

3 MR. RILEY: Excuse me. Your Honor, he just
4 said he didn't. He doesn't recall anything
5 Dr. Skeebers said. This is redundant.

6 THE COURT: Sustained.

7 Q (By Mr. Hart) Did Mr. Hazard, to your knowledge, ever
8 take any steps to protect users of the products, of the
9 Kaylo products, from the asbestos that was in it?

10 MR. RILEY: Asked and answered, Your Honor, on
11 cross-examination.

12 MR. HART: I haven't asked that.

13 THE COURT: Yes. I think so. Objection
14 sustained.

15 MR. HART: I didn't recall it, but that's all
16 I have.

17 Thank you, sir.

18 THE COURT: You may step down, sir. Thank
19 you.

20 Okay. Jurors, we are going to break now for
21 the weekend. We'll reconvene -- what, 8:30?

22 MR. RILEY: Yes.

23 THE COURT: 8:30, Monday morning, and our goal
24 will be to try to finish the testimony in the case on
25 Monday.

1 I'm aware of what your problem is, ma'am.

2 Okay. Court's in recess.

3 (Jurors exit courtroom)

4 MR. HART: Your Honor, I just want to put on
5 the record I would have asked Mr. Schillaci many
6 identifying aspect of Exhibit 439, including a
7 description of what is Kaylo 20. That I believe was
8 within his knowledge. He testified on other occasions
9 about normal Kaylo, the type of Kaylo being produced in
10 the plant. I also like to put on the record at this
11 time that I believe he's the singly qualified person
12 to respond to questions about 439 due to the facts
13 elicited by his own counsel, he's the sole remaining
14 person who was involved in Kaylo, which is relevant to
15 this case.

16 My position was that it was proper to ask him
17 to interpret what a document made by his own company
18 shortly after he left, what the terminology of that
19 document referred to under the common understanding of
20 the Owens Illinois Company, and I believe that
21 Your Honor's ruling did not permit me to do that within
22 the time frame.

23 THE COURT: The -- I think that the basis of
24 the Court's ruling is amply set forth on the record. I
25 don't think there is any reason why I should amplify

1 that any more.

2 I would like to alert you to one thing.

3 Juror Gordon said, don't forget about my problem. Her
4 problem is she has a real estate closing Wednesday at
5 one o'clock or something like that. I'm going to
6 remind you of that. We may have to discuss how we can
7 work out that problem some time next week. So
8 that's -- that's what she was talking to me about.
9 Okay.

10 (Proceedings concluded)

11

12

13

14

15

16

17

18

19

20

21

22

23

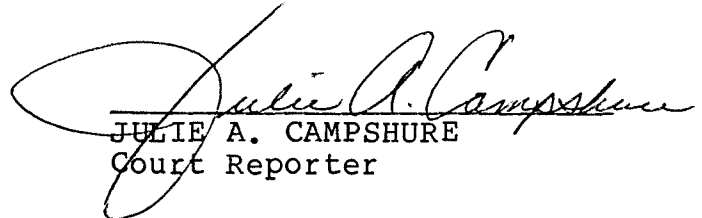
24

25

STATE OF WISCONSIN)
 (SS:
MILWAUKEE COUNTY)

I, JULIE A. CAMPSHURE, a Court Reporter in and for the State of Wisconsin, do hereby certify that I reported the foregoing proceedings and that the foregoing transcript consisting of 68 pages is a true and correct transcript of my stenograph notes made at said time and place.

Dated at Milwaukee, Wisconsin this 12th day of September, 1989.


JULIE A. CAMPSHURE
Court Reporter